



Testimony

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FEDERAL LAND MANAGEMENT

Comments on Selected Provisions of S. 1320 - A Bill to Revise Federal Land Management Planning

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G A O

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Mr. Chairman and Members of the Subcommittee:

We are here today to discuss the planning-related provisions of titles I and II of S. 1320—the Public Lands Planning and Management Improvement Act of 1999. The bill would provide new authority and give greater responsibility and accountability to the Department of Agriculture’s Forest Service and the Department of the Interior’s Bureau of Land Management (BLM) for planning and managing federal lands under their jurisdiction.

Over the last decade, we have identified long-standing deficiencies in, as well as improvements to, the planning processes of the Forest Service and BLM.¹ In addition, we have made numerous recommendations to improve the cost-effectiveness and timeliness of the agencies’ decision-making and to better ensure that planned objectives are achieved. As requested, our testimony today will draw from our prior work to address three issues: (1) the statutory basis for the Forest Service’s current mission priorities, (2) the clarity of the mission statement in S. 1320, and (3) the extent to which the bill addresses identified planning deficiencies. In summary:

- Over the past 100 years, the Congress has enacted four principal multiple-use laws that guide the management of the 155 national forests in the National Forest System. However, the forests’ management is guided increasingly by the requirements in environmental laws that apply not only to the Forest Service but also to other federal agencies. These laws, unlike the Forest Service’s multiple-use laws, give priority to protecting natural resources. The implementation of these environmental laws has evolved over many years in response to implementing regulations and judicial interpretations, and the Congress has never explicitly acknowledged the effects of these laws, regulations, and judicial decisions on the production of goods and services on the national forests.
- The mission statement in S. 1320 would make it clear that the overriding priority of the Forest Service and BLM is ecosystem sustainability. This mission statement is consistent with the evolving mission of the Forest Service, which favors resource protection over production, as well as with the fundamental goal of maintaining and restoring ecological sustainability expressed in the agency’s June 12, 1999, preliminary draft planning rule. It is also consistent with the overarching objective of ecological sustainability identified in a March 15, 1999, report by a committee of scientists convened by the Secretary of Agriculture to review and evaluate

¹See app. I for pertinent GAO products on the decision-making processes of the Forest Service and BLM.

the Forest Service's planning process and to identify changes that may be needed to the agency's planning regulations.² Moreover, the mission statement in S. 1320 acknowledges the effects of sustaining ecosystems on the availability of other uses on the lands managed by the Forest Service and BLM. According to the mission statement, other uses may be available to an extent that is consistent with ecosystem sustainability. Thus, the bill's mission statement makes it clear that goods and services on the agencies' lands would be limited to the types, levels, and mixes imposed by considerations of land health and ecological sustainability. However, other sections of the bill still require some fine tuning and refinement to harmonize them with the agencies' new mission of ecosystem sustainability. In addition, we see two significant challenges that must be met if the agencies are to effectively implement their new mission. The first is adequately quantifying and measuring "ecosystem sustainability." Without this information, it will be difficult, if not impossible, for the agencies to (1) identify where or under what circumstances they should actively manage degraded lands to restore them rather than allow nature to take its course and (2) demonstrate that goods and services can be produced in ways that are consistent with sustaining ecosystems. The second challenge will be to determine whether the existing statutory framework of environmental laws enables the agencies to ensure ecosystem sustainability. Currently, there is no statute that specifically requires federal agencies to sustain ecosystems as such. Therefore, the agencies would need to turn to the laws and regulations intended to protect individual natural resources—such as species, water, and air. However, the agencies do not know whether these laws will provide the minimum level of ecological health needed to sustain ecosystems. Moreover, satisfying the requirements for protecting specific resources may not always be consistent with providing the conditions needed to sustain ecosystems, at least in the short term.

- S. 1320 also begins to address many of the long-standing planning deficiencies that have contributed to delays, increased costs, and unmet objectives. For example, the bill would (1) require planning to be completed within discrete time frames, (2) require the agencies to consider funding constraints when preparing their plans, (3) establish deadlines for filing appeals and litigation and limit these challenges to the issues and stakeholders involved in reaching a decision, and (4) require the agencies to monitor the implementation of their plans and adapt their management on the basis of new information. However, certain sections of

²Sustaining the People's Lands: Recommendations for Stewardship of the National Forests and Grasslands into the Next Century, U.S. Department of Agriculture, Committee of Scientists, Washington, D.C. (Mar. 15, 1999).

the bill could be improved to increase the efficiency, effectiveness, and predictability of the agencies' planning processes. For example, as written, S. 1320 could limit assessments to lands managed by the Forest Service and BLM. However, to adequately address ecological issues and conditions that transcend the administrative boundaries of the agencies' land management units, as well as assess the cumulative impacts of proposed activities, assessments will need to include other federal and nonfederal lands. In addition, according to the bill, assessments should consider economic and social as well as ecological effects. These effects will be difficult to consider if assessments are limited to Forest Service and BLM lands.

Management of the National Forests Is Increasingly Guided by Environmental Requirements

Over the past 2 decades, the Forest Service has refocused its activities, shifting from producing goods and services (such as timber) toward protecting land health and forest resources. This shift in emphasis has evolved in response to the requirements in environmental laws and their implementing regulations and judicial interpretations. However, the Congress has never explicitly acknowledged the effects of the laws, regulations, and judicial decisions on the agency's multiple-use mandate.

The Congress has enacted four laws specifically to guide the management of the national forests. These laws require the Forest Service to manage the 192 million acres of land in the National Forest System under the principles of multiple-use and sustained-yield to meet the diverse needs of the American people. Under the Organic Administration Act of 1897, the national forests are to be established to improve and protect the forests within their boundaries or to secure favorable water flow conditions and provide a continuous supply of timber to citizens. The Multiple-Use Sustained-Yield Act of 1960 added outdoor recreation, range, watersheds, and fish and wildlife. This act also requires the agency to manage its lands to provide high levels of all of these uses to current users (the multiple-use principle) while sustaining the lands' ability to produce these uses for future generations (the sustained-yield principle). The Forest and Rangeland Renewable Resources Planning Act of 1974 (known as RPA) establishes a long-range strategic planning process through which the Forest Service reviews the condition of the country's long-range renewable resources. The National Forest Management Act of 1976 (NFMA), which amended RPA, requires each national forest or group of forests to develop a land and resource management plan, commonly called a forest plan. Under the act and its implementing regulations, the Forest Service is to (1) recognize wilderness as a use of the forests and (2) provide for the

diversity of plant and animal communities (biological diversity). In addition, this act attempts to facilitate continuous levels of timber production on Forest Service lands while, at the same time, protecting and improving other forest resources, such as air, water, and wildlife and fish habitat.

While establishing long-term goals, NFMA does not provide direction for achieving them. For example, it does not indicate how much timber and other commodities should be provided, which uses of national forests should have priority, or how conflicts among uses should be resolved. The act's legislative history is also silent on these matters. As a result, the Forest Service is expected to provide for continuous levels of certain goods and services and for the protection of other resources, even when providing for one may conflict with sustaining another. However, because of growing demands for these uses, the Forest Service is increasingly unable to avoid, resolve, or mitigate conflicts among competing uses on national forests by separating them into different areas or over time.

While the Organic Administration Act, the Multiple-Use Sustained-Yield Act, RPA, and NFMA provide little direction for the agency in resolving conflicts among competing uses on its lands, the requirements in environmental laws and their implementing regulations and judicial interpretations do. These laws, unlike the Forest Service's multiple-use laws, give priority to protecting natural resources. In particular, section 7 of the Endangered Species Act represents a congressional design to give greater priority to the protection of endangered species than to the other missions of the Forest Service and other federal agencies.³ When proposing a project, the Forest Service bears the burden of demonstrating that its actions will not likely jeopardize threatened and endangered species. The agency is also required by regulations implementing the National Environmental Policy Act of 1969 (NEPA) to assess the direct, indirect, and cumulative effects of activities occurring outside the national forests, such as timber harvesting on state and private lands, in deciding which uses to emphasize on its lands. In addition, other environmental laws, their implementing regulations, and judicial interpretations require the Forest Service to protect other components of natural systems, including water and air. Moreover, under the agency's biological diversity requirement for fish and wildlife habitat—found in its regulations implementing NFMA—the Forest Service is to maintain well-distributed viable populations of existing native and desired nonnative vertebrate species in a planning area.

³TVA v. Hill, 437 U.S. 153, 185 (1978).

Over time, the requirements in environmental laws and their implementing regulations and judicial interpretations, together with changing public values and concerns about the management of the national forests and better ecological information, have led the Forest Service to change the mix of its activities, shifting the focus from production toward protection. For instance, the number of threatened and endangered species on national forests and grasslands has risen more than sevenfold in the 26 years since the Endangered Species Act was passed in 1973.

In the mid-1970s when NFMA was enacted, the agency believed that its mission was primarily to produce timber and, more generally, to serve as a steward of the land. Today, the Forest Service states that maintaining and restoring the health of the land is its overriding priority and that outputs of goods and services will be accomplished within the “ecological sideboards imposed by land health.” Moreover, within the decision space imposed by these ecological sideboards, the agency has increasingly chosen to emphasize land health and ecological sustainability. For example, the Forest Service has used its discretionary authority to set aside or withdraw an increasing percentage of lands for conservation.

To accommodate the requirements of the Endangered Species Act and other environmental laws, the Forest Service, BLM, and other federal land management agencies have turned to a science-based, ecological approach for managing their lands and resources. This approach, called ecosystem management, is designed to ensure the sustained functioning and diversity of natural systems—such as watersheds, airsheds, soils, and vegetative and animal communities—by analyzing and planning along the boundaries of these systems rather than along the boundaries of national forests and other federal land management units. Then, for example, the Endangered Species Act can be used as a “fine filter” to catch and support the special needs of species that otherwise would go unmet.

S. 1320 Makes Clear That Priority Is to Be Given to Sustaining Ecosystems

As we reported in April 1997, statutory and other changes to improve the efficiency and effectiveness of the Forest Service’s decision-making process cannot be identified until the Congress and the agency reach agreement on the Forest Service’s mission priorities. Without such an agreement, we see distrust and gridlock prevailing in any effort to streamline the agency’s statutory framework. Moreover, reaching agreement on the Forest Service’s mission priorities is key to developing the quantifiable goals and objectives as well as the long-term and annual

performance measures necessary to hold the agency accountable for its performance.

It appears to us that S. 1320 establishes a starting point for the Congress and the administration to agree on the mission priorities of both the Forest Service and BLM. The bill states that the two agencies are to manage their lands to “assure the health, sustainability, and productivity of the lands’ ecosystems.” This is consistent with the Forest Service’s shift in emphasis away from producing goods and services and toward protecting land health and forest resources, as well as with the ecosystem management approach being used by the Forest Service and BLM to manage their lands and resources. Similarly, the Forest Service’s June 12, 1999, preliminary draft planning rule states that the “most fundamental goal of the National Forest System is to maintain and restore ecological sustainability, the long-term maintenance of the diversity of native plant and animal communities, and the productive capacity of ecological systems.” The agency’s preliminary draft planning rule was, in turn, based on a March 15, 1999, report by an interdisciplinary committee of scientists, which stated that the Forest Service’s overarching objective should be ecological sustainability.

By clarifying the mission priorities of the Forest Service and BLM, S. 1320 represents a significant first step toward holding the two agencies accountable for their performance. The bill also represents a significant change in mission from its predecessor (S. 1253), which emphasized multiple uses and sustained yields of goods and services.⁴ However, other sections of S. 1320 still require some fine tuning and refinement to harmonize them with the agencies’ new mission of sustaining ecosystems.

For example, S. 1320 would require the Forest Service and BLM, when developing a plan and making a decision, to accord “equal consequence” to five elements, including the production of goods and services and desired future conditions. However, the bill does not make it clear that desired future conditions are to reflect the minimum level of ecological health needed to sustain ecosystems. Moreover, if the overriding mission priority of the two agencies is to sustain ecosystems and desired future conditions reflect the minimum level of ecological health needed to do so, then, it would seem to us, that this element of the plan must have priority over all other elements. In addition, the bill identifies which law would prevail in the event of inconsistencies between it and certain other laws,

⁴S. 1253 was introduced in 1997. Eight hearings were held on the bill; however, it was not reported out of the Senate Committee on Energy and Natural Resources.

including NFMA and the statutes governing the management of units of the National Wilderness Preservation, National Wild and Scenic Rivers, and National Trails systems. It does not, however, identify which law would prevail in the event of inconsistencies between it and other environmental laws, such as the Endangered Species Act, NEPA, and the Clean Water Act.

Ecosystem Sustainability Must Be Adequately Quantified and Measured

We also see two significant challenges that must be met in implementing an ecosystem sustainability mission. The first is adequately quantifying and measuring the term “ecosystem sustainability.” For instance, according to the committee of scientists, sustaining ecosystems would require maintaining the composition (biological diversity of plants and animals), structure (biological and physical attributes, such as large trees, unconstrained rivers, and habitat patterns), and processes (including photosynthesis, water movement, and disturbance cycles) of biological and ecological systems. However, the Forest Service and BLM do not know what these systems are, where they are, what ecological condition they are in, or what their ecological condition should be. Without this information, it will be difficult, if not impossible, for the agencies to identify where or under what circumstances they should actively manage degraded lands to restore them rather than allow nature to take its course. Moreover, to the extent that the bill would require the production of goods and services to be consistent with sustaining ecosystems, as suggested by its mission statement, their production could be halted if the agencies were unable to adequately demonstrate that human activities would not likely jeopardize the minimum ecological conditions necessary to sustain ecosystems. This stalemate, in turn, could adversely affect the individuals and communities that are economically dependent on the national forests but are precluded from forming reasonable expectations about the future availability of goods and services from the forests.

The Adequacy of the Existing Statutory Framework to Sustain Ecosystems Must Be Determined

The second challenge will be to determine whether the existing statutory framework of environmental laws enables the agencies to ensure ecosystem sustainability. Currently, there is no statute that specifically requires federal agencies to sustain ecosystems as such. Therefore, the agencies would need to turn to the laws and regulations intended to protect individual natural resources. For instance, a stated purpose of the Endangered Species Act is to conserve the ecosystems upon which endangered and threatened species depend, and the regulations adopted under NEPA require federal agencies to identify and consider the effects of their activities on ecosystems. However, the agencies do not know

whether these laws will provide the minimum level of ecological health needed to sustain ecosystems. As the understanding of ecosystems increases through experience gained from ecosystem management initiatives—such as the Northwest Forest Plan—needed changes to existing legislation can be sought to better define and achieve the minimum required level of ecosystem sustainability.

There are, however, indications that satisfying the requirements for protecting specific resources may be difficult to reconcile with providing the conditions needed to sustain ecosystems, at least in the short term. For example, the most extensive and serious problem related to the health of the 91 national forests located in the interior West is the excessive accumulation of vegetation that forms fuels for large, intense, uncontrollable, and catastrophically destructive wildfires.⁵ Fuels are accumulating, in large part, because for decades the Forest Service has suppressed fire in forests where frequent, low-intensity fires historically removed flammable undergrowth without significantly damaging larger trees. However, many agency officials told us they do not believe it is possible to set controlled fires to reduce fuels on a scale replicating that of natural fires and still meet air quality standards under the Clean Air Act. The Forest Service and EPA are conducting a 3-year experiment to better determine whether and how it will be possible to reconcile controlled burning and air quality standards. Moreover, mechanically removing fuels (through commercial timber harvesting and other means) can have adverse effects on wildlife habitat and water quality in many areas, at least in the short term.

S. 1320 would begin to address the requirements of planning and environmental laws that may be difficult to reconcile in the short term with long-term ecosystem sustainability. For instance, when a forest supervisor or BLM district manager (after providing an opportunity for review by the appropriate state governor) finds that a prescribed fire will (1) reduce the likelihood of greater emissions from a wildfire and (2) be conducted so as to minimize impacts on air quality to the extent practicable, the prescribed fire is deemed under the bill to be in compliance with applicable requirements of the Clean Air Act. The bill would also provide that when a state has certified that a nonpoint source of water pollution, such as a timber-harvesting operation and related roads, meets best management practices or their functional equivalent, the

⁵Western National Forests: A Cohesive Strategy Is Needed to Address Catastrophic Wildfire Threats (GAO/RCED-99-65, Apr. 2, 1999).

activity is deemed to be in compliance with applicable provisions of the Clean Water Act.

However, as we observed in our April 1997 report on the Forest Service's decision-making process, unintended consequences have often been the rule rather than the exception in implementing planning and environmental statutes affecting federal land management. Therefore, any proposal to change the current statutory framework would require careful consideration to ensure that no unintended consequences would occur. Some Forest Service officials, including a former Chief, believe that an independent, bipartisan commission may need to be established to thoroughly review the current statutory framework before making recommended changes to laws. Therefore, a more systematic and comprehensive approach may be needed to ensure that the requirements of planning and environmental laws are consistent with the goal of ecosystem sustainability.

S. 1320 Begins to Address Many Long-Standing Planning Deficiencies

Procedural changes to the agencies' planning processes are needed. As we have previously reported, the Forest Service's planning process is clearly broken and in need of repair and the agency's limited resources are increasingly being consumed by efforts to comply with procedural requirements. The fundamental problem with the agency's planning process, as highlighted in our April 1997 testimony on delays to revising the Tongass forest plan, is the lack of accountability for making timely, orderly, and cost-effective decisions. Therefore, the objective of proposed procedural changes to the Forest Service's planning should be to ensure that scientifically credible and legally defensible decisions are made in a timely, orderly, and cost-effective manner.

We believe that S. 1320 begins to address many of the long-standing planning deficiencies that have contributed to delays, increased costs, and unmet objectives. However, certain sections of the bill still could be strengthened to increase the efficiency and effectiveness of the agencies' planning processes. For ease of discussion, we have divided planning into two components—process and participation. Process, in turn, includes data and decisions, while participation consists of interagency coordination and public involvement.

Data

As we have previously reported, data gathered by federal agencies are often not comparable; large gaps in the available information exist; and the

agencies may not know who has what information or how existing information can be made available within agencies, across agencies, and to the public. These data limitations continue to hinder the development of federal land management plans, result in legal challenges to the plans, and limit the implementation of efforts to expedite decision-making. In addition, until recently, the Forest Service and BLM lacked an approach to adequately assess ecological, social, and economic issues that transcend the administrative boundaries of their land management units—such as issues concerning watersheds or the habitats of wide-ranging species, including birds, bears, and salmon. The lack of such an approach has contributed to the inefficiency in developing, and ineffectiveness in implementing, federal land management plans. Moreover, once a plan is approved, agencies must monitor its implementation to meet long-term and annual goals and objectives and to adapt the plan's management when new information becomes available. Historically, however, the Forest Service has failed to live up to its own monitoring requirements, particularly those for monitoring the effects of past management decisions. The failure to monitor and evaluate its decisions could expose the agency to further litigation.

S. 1320 includes provisions to address these data limitations. Specifically, the bill would (1) authorize the Forest Service and BLM to assess issues and conditions that transcend the administrative boundaries of their land management units and (2) require the agencies to monitor the implementation of their plans and adapt their management on the basis of new information. We offer the following observations and suggestions for your consideration in fine-tuning the data-related provisions of S. 1320.

- The bill would allow, but would not require, the agencies to conduct assessments. Our work in the Pacific Northwest, the interior Columbia River basin, and elsewhere has shown that assessments are often necessary and should be required to efficiently and effectively address issues and conditions that transcend the administrative boundaries of federal land management units.
- S. 1320 could also limit the assessments to lands managed by the Forest Service and BLM. However, to adequately address ecological issues and conditions that transcend the administrative boundaries of the agencies' land management units, as well as comply with NEPA's requirement for assessing the cumulative impacts of proposed activities, assessments will need to include other federal and nonfederal lands. In addition, according to the bill, assessments should consider economic and social as well as

ecological effects. These effects will be difficult to consider if assessments are limited to Forest Service and BLM lands.

- The bill would make it clear that assessments are not decisions, but would not specify what their outcome should be. As we found in the interior Columbia River basin assessment, the lack of clear objectives can increase time and costs. Therefore, assessments should be designed to provide the agencies' managers with adequate direction for reaching informed decisions on the issues and conditions addressed in the assessments.
- S. 1320 would require the Forest Service and BLM to evaluate whether a plan is being implemented as planned (implementation monitoring), but not necessarily whether it is accomplishing its intended results (effectiveness monitoring) or whether the management direction in the plan is the best way to achieve its goals and objectives (validation monitoring). All three types of monitoring are important, especially for an agency such as the Forest Service, where unintended consequences have often been the rule rather than the exception in implementing plans. However, monitoring costs can be significant. For example, according to the Forest Service, the scientific expertise, data, and technology currently needed to conduct the required monitoring of species' viability far exceed the resources envisioned by the agency when it developed the regulations implementing NFMA, as well as the resources available to any agency or scientific institution. Therefore, it may be important to know the magnitude of the costs and resources that would be needed to implement a monitoring requirement before enacting it into law.

Decisions

Basing decisions on adequate data, which may require conducting assessments as well as adapting management on the basis of new information, should help to reduce the time and costs needed to make decisions. Forest plans have generally taken from 3 to 10 years to complete. For example, the Forest Service spent about 10 years and \$13 million revising the Tongass forest plan. In addition, the agency has often failed to achieve or has altered its planned objectives. For instance, the revised Tongass plan was modified within 2 years to reduce the annual goal for timber sales by 30 percent. Moreover, after spending over 5 years and about \$41 million through the end of fiscal year 1998 to develop plans for managing federal lands in the interior Columbia River basin, the Forest Service and BLM have exceeded time and cost estimates but have still not made the necessary decisions and finalized their plans. This planning effort has taken longer and cost more than anticipated, in part, because

the agencies failed to limit the scope of their decision to issues that are appropriately dealt with at the basin scale. However, their development of the Northwest Forest Plan has shown, the agencies can, given the right incentives, complete an implementable plan expeditiously and at a relatively low cost.

To expedite decision-making, S. 1320 would, among other things, require the Forest Service and BLM to (1) identify the issues to be decided, and the documentation required, at each level of decision-making; (2) meet established deadlines for making decisions; (3) identify the costs to implement their plans, as well as the effects of lower appropriation levels on accomplishing the plans' objectives; and (4) generally limit when changes to a plan can occur. We offer the following observations and suggestions for your consideration in fine-tuning the decision-related provisions of S. 1320.

- The bill would limit decisions to two levels of planning, one of which would be the project or site-specific level for management activities. Our work has shown that, depending on the issues to be decided, decisions may be required at more than one planning level above the project level. For instance, in the interior Columbia River basin, the Forest Service and BLM believe that a series of decisions will be required that affect federal land management. Therefore, a "one-size-fits-all" solution to the number of decision levels may not be appropriate. Instead, the Forest Service and BLM could be required to identify (1) the issues to be addressed in revising or amending their land management plans and (2) the appropriate geographical or ecological scales for making management decisions on these issues.
- Under S. 1320, the Forest Service or BLM would be allowed to continue implementing management activities under an approved plan while the plan was being amended or revised unless otherwise required to stop by a provision of the bill, a court order, or a formal declaration by the Secretary of Agriculture or the Secretary of the Interior. However, S. 1320 does not identify the criteria that the Secretaries should or must use in reaching such decisions. Criteria could help to ensure that the Secretaries' decisions are consistent with the agencies' mission priorities. For instance, the criteria could include discontinuing management activities that pose clear threats to ecosystem sustainability.

Interagency Coordination

As the role of environmental laws in the Forest Service's decision-making has increased, so too has the role of the federal regulatory agencies that are charged with implementing and enforcing them. We have found that disagreements between the Forest Service and federal regulatory agencies—including Interior's Fish and Wildlife Service, Commerce's National Marine Fisheries Service, and the Environmental Protection Agency (EPA)—over the best ways of achieving environmental objectives and of implementing laws and regulations have delayed the development and implementation of forest plans and projects. These disagreements often stem from the agencies' differing standards for evaluating environmental effects and risks, which in turn reflect their disparate missions and responsibilities. For example, the Forest Service may be willing to accept a greater level of risk to the recovery of a threatened or endangered species under its multiple-use mandate than would the Fish and Wildlife Service or the National Marine Fisheries Service, both of which are charged unambiguously with conserving and protecting species threatened with extinction.

S. 1320 would give the Forest Service and BLM more authority and responsibility in meeting the requirements of the Endangered Species Act. For instance, the bill would allow the Fish and Wildlife Service to certify the Forest Service and BLM to fulfill the consultation requirements and prepare the "biological opinion" required by the act. (A biological opinion reviews the potential effects of a proposed action on listed species and/or their critical habitat and must be based on the best available biological information.⁶)

Deciding whether to transfer more authority and responsibility for meeting the requirements of the Endangered Species Act from federal regulatory agencies to federal land management agencies is a policy decision for the Congress. However, in our April 1997 report on the Forest Service's decision-making process, we observed that any potential gains in efficiency from transferring the responsibility for environmental compliance from the regulatory agencies to the Forest Service would need to be weighed against the policy reasons that led originally to separating the responsibility for managing the nation's forests for multiple uses from the responsibility for ensuring regulatory compliance with environmental and other laws. Although S. 1320 would make clear that the overriding priority of the Forest Service and BLM is ecosystem sustainability, satisfying the requirements for protecting specific resources may not

⁶Endangered Species Act: Types and Number of Implementing Actions (GAO/RCED-92-131BR, May 8, 1992).

always be consistent with providing the conditions needed to sustain ecosystems, at least in the short term, and federal regulatory agencies may continue to disagree with the Forest Service and BLM over the best ways of achieving environmental objectives and of implementing laws and regulations.

Our work has not examined the conditions that should govern such a transfer. However, we note that the bill, as presently structured, does not identify (1) criteria for certifying the land management agencies, (2) a monitoring role for the regulatory agencies once the land management agencies have been certified, or (3) procedures for revoking the certifications if the Forest Service and BLM fail to adequately carry out their new responsibilities.

Public Involvement

The role of the public in federal land management has also increased. Those concerned about how federal lands are managed have expressed their desire to become more involved in decision-making and have demonstrated their preference for presenting their concerns, positions, and supporting documentation during, rather than after, an agency's development of proposed plans. They have also signaled their intent to use administrative appeals and lawsuits to challenge decisions that they have not been involved in reaching.

As we found in the Pacific Northwest and the interior Columbia River basin, the Forest Service and BLM have improved opportunities for public participation in their decision-making processes. For example, in our July 1998 report on ensuring safe drinking water in western Oregon's municipal watersheds, we stated that the Forest Service and BLM had shown a willingness to increase the involvement of cities and other stakeholders in their decision-making and to come together with these parties to discuss, understand, and address watershed problems and issues and to implement restoration plans.⁷

However, our work has shown that decision-making on managing federal lands is inherently contentious and that public involvement in the process should not be viewed as a panacea to legal challenges. Dissatisfaction with an agency's process for public involvement often cannot be dissociated from dissatisfaction with the outcome of the process, and parties opposed to a particular activity, such as timber harvesting, can cause a federal

⁷Oregon Watersheds: Many Activities Contribute to Increased Turbidity During Large Storms (GAO/RCED-98-220, July 29, 1998).

agency to delay, alter, or withdraw plans and projects by availing themselves of the opportunities for administrative appeal and judicial review that are provided by statute or regulation.

As we reported in April 1997, the Forest Service alone receives over 1,200 administrative appeals to project-level decisions annually, and about 20 to 30 new lawsuits are filed each year. S. 1320 would, among other things, establish deadlines for filing appeals and litigation and limit these challenges to the issues and stakeholders involved in reaching the contested decision. To the extent that parties have conducted “litigation by ambush”—that is, have withheld their concerns, positions, and supporting documentation until after a decision has been made—the bill may help to ensure that challenges to plans and projects are brought only by participants in the agencies’ planning processes.

Conclusions

In conclusion, Mr. Chairman, as we stated 2 years ago, the Forest Service has made hard, controversial policy choices in shifting its emphasis from production to resource protection.⁸ Now that it has refocused its priorities, we believe that it is up to the Congress to accept or reject the agency’s choices and to acknowledge the effects of the new priorities on the mix of multiple uses on the national forests. In our view, the mission statement in S. 1320 acknowledges the agency’s shift in mission priorities. If enacted, this mission statement could allay the concerns of administration officials who have been hesitant to suggest procedural changes to environmental laws and to the agency’s planning process for fear that the Congress might also make substantive changes to the laws with which they would disagree. By establishing common ground for discussion, the bill provides an opportunity for the administration and the Congress to begin working together to identify (1) the procedural changes to the Forest Service’s and BLM’s planning processes that are necessary to efficiently and effectively ensure ecosystem sustainability and (2) the extent to which such changes should be made legislatively.

Mr. Chairman, this concludes my formal statement. If you or the other Members of the Subcommittee have any questions, we will be pleased to answer them.

⁸The Results Act: Observations on the Forest Service’s May 1997 Draft Plan (GAO/T-RCED-97-223, July 31, 1997).

Contact and Acknowledgment

For future contacts regarding this testimony, please contact Barry T. Hill at (202) 512-3841. Individuals making key contributions to this testimony included Charles Cotton, Chester Joy, and Doreen Feldman.

Pertinent GAO Reports and Testimonies on Forest Service and Bureau of Land Management Decision-Making

Forest Service: Information on the Forest Service Appeals System
(GAO/RCED-89-16BR, Feb. 16, 1989).

Public Lands: Limited Progress in Resource Management Planning
(GAO/RCED-90-225, Sept. 27, 1990).

Forest Service: The Flathead National Forest Cannot Meet Its Timber Goal
(GAO/RCED-91-124, May 10, 1991).

Ecosystem Management: Additional Actions Needed to Adequately Test a Promising Approach (GAO/RCED-94-111, Aug. 16, 1994).

Forest Service: Factors Affecting Timber Sales in Five National Forests
(GAO/RCED-95-12, Oct. 28, 1994).

Forest Service: Issues Relating to Its Decisionmaking Process
(GAO/T-RCED-96-66, Jan. 25, 1996).

Forest Service: Issues Related to Managing National Forests for Multiple Uses (GAO/T-RCED-96-111, Mar. 26, 1996).

Forest Service Decision-Making: Greater Clarity Needed on Mission Priorities (GAO/T-RCED-97-81, Feb. 25, 1997).

Forest Service Decision-Making: A Framework for Improving Performance
(GAO/RCED-97-71, Apr. 29, 1997).

Tongass National Forest: Lack of Accountability for Time and Costs Has Delayed Forest Plan Revision (GAO/T-RCED-97-153, Apr. 29, 1997).

Ecosystem Planning: Northwest Forest and Interior Columbia River Basin Plans Demonstrate Improvements in Land-Use Planning (GAO/RCED-99-64, May 26, 1999).

Forest Service Priorities: Evolving Mission Favors Resource Protection Over Production (GAO/RCED-99-166, June 17, 1999).

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